

amendments. Finally, Applicant has amended page 8 of the specification to correct a formatting error.

II. Rejection Under 35 U.S.C. § 102(b)

Claims 1-10 have been rejected as anticipated by U.S. Patent No. 3,930,865 to *Faust et al.* ("*Faust*") under 35 U.S.C. § 102(b) for the reasons set forth on page 2 of the present Office Action. Specifically, the Examiner asserts that *Faust* anticipates the above claims because the reference allegedly meets the limitations of the claims. Applicant disagrees and respectfully traverses this rejection for at least the reasons set forth below.

For a reference to successfully anticipate the present claims, "[t]he identical invention must be shown in as complete detail as is contained in the patent claim." *Richardson v. Suzuki Motor Co.*, 868 F. 2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). *Faust* does not fulfill this requirement.

Claim 1 of the present invention recites, among other things, "wherein said at least one direct dye is chosen from an acidic anthraquinone dye, a cationic anthraquinone dye, an acidic azo dye, and a cationic azo dye." *Faust* does not teach at least this aspect of Applicant's claims.

For example, the Examiner points to column 5, line 45, of *Faust*, which recites the compound 2-ethyl-anthraquinone. This compound, however, is not cationic, nor does it comprise an acid group. Additionally, the Examiner points to Example 3 of *Faust*, which recites the compound 2,4-dinitro-6-chloro-2'-acetamido-5'-methoxy-4'-(β-

hydroxyethyl- β' -cyanoethyl)-amino-azobenzene. Likewise, this compound is not cationic, nor does it comprise an acid group.

At least because the cited reference does teach at least one direct dye chosen from an acidic anthraquinone dye, a cationic anthraquinone dye, an acidic azo dye, and a cationic azo dye, there can be no anticipation. Accordingly, Applicant respectfully requests withdrawal of this rejection.

III. Rejections Under 35 U.S.C. § 103

Under 35 U.S.C. § 103(a), the Examiner (A) has rejected claims 1-27 as unpatentable over U.S. Patent No. 4,509,949 to *Huang et al.* ("*Huang*") for the reasons set forth on page 3 of the Office Action and (B) has rejected claims 1-9, 15-19, and 23-27 as unpatentable over Japanese Patent No. 01-213221 to *Mori et al.* ("*Godo*") or Japanese Patent No. 63-218614 to *Kubota et al.* ("*Mitsubishi*") in view of U.S. Patent No. 5,102,655 to *Yoshihara et al.* ("*Yoshihara*") for the reasons set forth on pages 4-6 of the Office Action. Applicant respectfully traverses these rejections for at least the following reasons.

To establish a *prima facie* case of obviousness, the Examiner bears the burden of establishing at least that the cited references teach or suggest all of the claim limitations. M.P.E.P. § 2143. Applicant respectfully submits that the Examiner has not shown that *Huang*, *Godo* in view of *Yoshihara*, and *Mitsubishi* in view of *Yoshihara* teach or suggest all of the limitations of Applicant's claims, nor has the Examiner satisfied his burden of establishing a *prima facie* case of obviousness based on any of these references or reference combinations relied upon in the § 103 rejections.

A. Huang

The Examiner alleges that the "it would have been obvious to ... substitute the reactive dye of Huang composition with direct dyes as claimed because one would expect that the use of reactive dye as taught by Huang would be similarly useful in hair dyeing composition." (Office Action dated October 3, 2001, page 3, lines 19-22.) Applicant disagrees at least because *Huang* is nonanalogous art and because *Huang* does not teach all of the elements of Applicant's claims.

1. Huang does not teach or suggest the claimed elements

Huang alone does not teach or suggest all of the elements of Applicant's claims. For example, nowhere in *Huang* is Applicant's at least one direct dye chosen from "an acidic anthraquinone dye, a cationic anthraquinone dye, an acidic azo dye, and a cationic azo dye." (For example, claim 1.) These elements are recited in every one of Applicant's independent claims. (See, for example, claims 1, 21, 23, and 26.) Even further, *Huang* does not teach or suggest "a process of improving the conservation of the dyeing power of a direct dye composition..." (claim 21) or "a process for dyeing hair by direct dyeing..." (claims 23 and 26). Absent a teaching or suggestion of these elements, *Huang* cannot render the instant claims obvious.

The Examiner cites the examples in Table 1 of *Huang*, but these examples do not teach or suggest Applicant's at least one direct dye chosen from "an acidic anthraquinone dye, a cationic anthraquinone dye, an acidic azo dye, and a cationic azo dye." The examples of *Huang* recite "Reactive Red 24" and "Reactive Black 4." These

are monochlorotriazine dyes, which do not fall within the scope of Applicant's claims, nor do they suggest the at least one direct dye claimed by Applicant.

As *Huang* does not teach or suggest all of the elements of Applicant's claims, Applicant respectfully requests withdrawal of this rejection.

2. Huang is nonanalogous art

Moreover, a § 103 rejection is only proper when it relies upon analogous art. M.P.E.P. § 2141.01. An analogous-art reference "must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." M.P.E.P. § 2141.01 (citations omitted). *Huang* is not analogous art for at least the following reasons.

The field of Applicant's endeavor is cosmetics. Applicant claims a "cosmetic composition." (For example, claim 1.) *Huang*, to the contrary, is directed to print pastes. (*Huang*, Abstract.) In particular, *Huang* is concerned with textile printing. (*Huang*, col. 1, lines 22-23.) Clearly, these are not the same field.

Additionally, *Huang* is not reasonably pertinent to the problem Applicant is concerned with. One aspect, for example, of Applicant's invention sought to "preserve the dyeing power of dye compositions containing a direct dye, for compositions liable to be stored at low temperatures, in particular at temperatures below 10°C."

(Specification, page 2, lines 8-11.) *Huang*, for example, is directed to printing pastes that are less stringy and more buttery in rheology. (*Huang*, col. 4, lines 65-68.) *Huang* found that its polymers were better for screen-printing than the polymers of the prior art because "there is less bounce-back of the print pastes on release of the pressure

exerted by the print rod.” (*Huang*, col. 5, lines 1-3.) Applicant respectfully submits that *Huang*, which is directed to solving a problem in the textile arts, is irrelevant to solving a problem in the cosmetic arts.

B. Godo in view of Yoshihara

The Examiner alleges that “[i]t would have been obvious to those skilled in the art to at least partially substitute [the] carbon black colorant with a direct dye as claimed.” (Office Action dated October 3, 2001, page 5, lines 15-16.) To reach this conclusion, however, the Examiner alleges that “Yoshihara teaches the equivalence between these colorants [carbon black, azo dye, and anthraquinone dye] for the temporary coloring of hair.” (Office Action dated October 3, 2001, page 5, lines 17-18.) Applicants disagree for at least the reasons that the references are not properly combinable and that not all of the claimed elements are taught by this reference combination.

When an Examiner relies on a combination of references, he can satisfy his burden of obviousness “only by showing some objective teaching [leading to the combination].” *In re Dembiczak*, 175 F.3d 994, 999 (Fed. Cir. 1999) (citation omitted) (emphasis supplied). “[This] showing must be clear and particular” and is “essential” to avoid falling into the hindsight trap. *Id.* In the present case, the Examiner has not satisfied this burden.

Godo teaches “a resin composition that fixes a hair coloring agent, such as a pigment, in order to temporarily color hair.” (*Godo*, page 3, lines 4-6.) The only coloring agent that it discloses is carbon black, a pigment. (*Godo*, page 12, line 4.) *Yoshihara* discloses that carbon black, azo dye, and anthraquinone dye are broadly classified as

temporary hair dyes. (*Yoshihara*, col. 3, line 58—col. 4, line 48.) Contrary to the Examiner's allegations, however, *Yoshihara* discloses no more, especially as to whether carbon black, azo dye, and anthraquinone dye are equivalents.

The Examiner alleges that the "selection of particular known temporary direct dyes for addition to [*Godo's*] compositions would have been obvious." (Office Action dated October 3, 2001, page 5, lines 19-20.) Applicant respectfully submits that there is no teaching or suggestion in either reference that leads to the Examiner's proposed substitution. *Godo* does not disclose temporary direct dyes, let alone those claimed by Applicant. *Yoshihara* does not teach the interchangeability of carbon black (a pigment) with cationic or acidic azo or anthraquinone dyes. The substitution proposed by the Examiner would require guesswork and serendipity, which would render the substitution "obvious to try" at best. Thus, the Examiner has not shown that the cited references as a whole would have led to Applicant's combination.

Moreover, *Yoshihara* does not disclose Applicant's at least one direct dye chosen from an acidic anthraquinone dye, a cationic anthraquinone dye, an acidic azo dye, and a cationic azo dye. The Examiner correctly acknowledged that *Godo* does not teach the direct dye as claimed. (Office Action dated October 3, 2001, page 4, lines 22-23.) Thus, the combination suggested by the Examiner does not teach all of the elements as-claimed by Applicant.

Accordingly, as the *Godo/Yoshihara* combination does not render obvious Applicant's claims, Applicant respectfully requests withdrawal of this rejection.

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C. Mitsubishi in view of Yoshihara

The Examiner has not satisfied his burden under § 103 with respect to the rejection over *Mitsubishi* in view of *Yoshihara* because the Examiner has not factually supported the rejection with any disclosure from the *Mitsubishi* reference itself.

"With regard to rejections under 35 U.S.C. 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a *prima facie* case of obviousness) is more probable than not." M.P.E.P. § 2142. In the instant case, the Examiner has not pointed to any portion of *Mitsubishi* at all, let alone one that would render Applicant's claims obvious. Accordingly, Applicant respectfully submits that the rejection over *Mitsubishi* is improper because it is not factually supported by any disclosure of the cited reference. Applicant respectfully requests withdrawal of this rejection.

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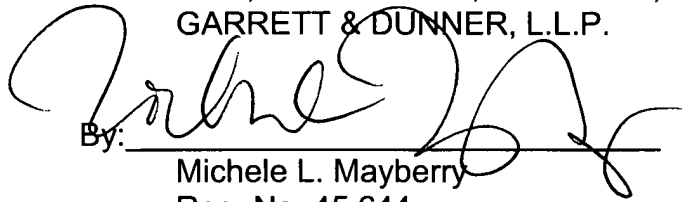
IV. Conclusion

In view of the foregoing amendments and remarks, Applicant respectfully requests the reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: February 8, 2002

Attachment: Appendix (Version with Markings to Show Changes Made)

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APPENDIX TO AMENDMENT OF FEBRUARY 8, 2002

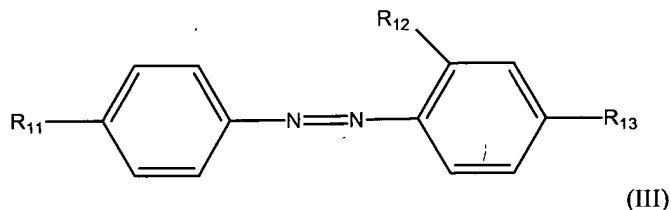
Version with Markings to Show Changes Made

IN THE SPECIFICATION:

Please substitute the paragraph below for the first full paragraph on page 8 of the specification, as follows:

iii) the azo dyes of formula (III) below:

in which:



R

44 - R₁₁ denotes a nitro or amino radical or an amino radical mono- or disubstituted with alkyls,

- R₁₂ denotes hydrogen or an alkyl radical,

- R₁₃ denotes an amino radical or an amino radical mono- or disubstituted with monohydroxyalkyls,

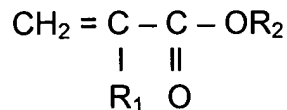
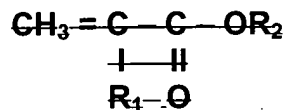
it being understood that the alkyl and alkoxy radicals mentioned above in formulae (I), (II), and (III) are C₁-C₄ and that they can be linear or branched, and the cosmetically acceptable salts of all these compounds.

IN THE CLAIMS:

Please substitute amended claims 2 and 7 below for original claims 2 and 7, as follows:

2. (Once Amended) A composition according to claim 1, wherein said at least one crosslinked polymer comprises:

- (a) residue units of one of an acrylic, methacrylic or ethacrylic acid,
- (b) residue units of an acrylate of formula:

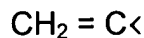


in which:

R₁ denotes H or CH₃ or C₂H₅, and

R₂ denotes an alkyl radical having from 10 to 30 carbon atoms, and,

- (c) residue units of a crosslinking polymerizable monomer containing a group



and also containing at least one other polymerizable group, wherein the unsaturated bonds in said CH₂ = C< group and said at least one other polymerizable group are not conjugated with each other.

7. (Once Amended) A composition according to ~~claim 6~~ claim 2, wherein said residue units (a) are present in an amount ranging from 96 to 98% by weight, said residue units (b) are present in an amount ranging from 1 to 4% by weight, and said residue units (c) are present in an amount ranging from 0.1 to 0.6% by weight, relative to the total weight of the crosslinked polymer.

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